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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHARLES STROUCHLER, SARA CAMPOS, by her next friend ANA SIMARD, and AUDREY ROKAW, by her next friend NINA PINSKY, individually and on behalf of all others similarly situated,

Plaintiffs,

- against -

NIRAV SHAH, M.D., as Commissioner of the New York State Department of Health, and ELIZABETH BERLIN, as Executive Deputy Commissioner of the New York State Office of Temporary and Disability Assistance, and ROBERT DOAR, as Administrator of the New York City Human Resources Administration/Department of Social Services,

Defendants.

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12 CV. 3216 (SAS)
(ECF CASE)

STIPULATION AND ORDER OF NOTICE IN CLASS ACTION

WHEREAS, by Complaint dated April 24, 2012, and First Amended Complaint dated June 27, 2012, the above-named Plaintiffs, on behalf of themselves and a class of similarly situated persons, commenced this action against Robert Doar, as Commissioner of the New York City Human Resources Administration ("City Defendant"),[1] and Nirav Shah, M.D., as Commissioner of the New York State Department of Health ("State Defendant")[2], and Elizabeth Berlin, as Executive Deputy Commissioner of the New York State Office of Temporary and Disability Assistance; and

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[1] Pursuant to Federal Rule of Civil Procedure Rule 25(d)(1), Commissioner Steven Banks is automatically substituted as a party for claims originally brought against Robert Doar, the former Commissioner of the Human Resources Administration.

[2] Pursuant to Federal Rule of Civil Procedure Rule 25(d)(1), Howard Zucker, M.D., as Acting Commissioner of the New York State Department of Health ("NYS DOH"), is automatically substituted as a party for claims originally brought against Nirav Shah, M.D., the former Commissioner of NYS DOH.

WHEREAS, this action was voluntarily dismissed against Defendant Elizabeth Berlin, as Executive Deputy Commissioner of the New York State Office of Temporary and Disability Assistance; and

WHEREAS, City Defendant and State Defendant each answered the First Amended Complaint and denied each allegation of wrongdoing contained in the First Amended Complaint; and

WHEREAS, by Opinion and Order dated October 5, 2012, this Court certified a class defined as: "All New York City Medicaid recipients of continuous personal care services who, at any time since January 1, 2011, have been threatened with unlawful reduction or discontinuance of these services or whose care has been unlawfully reduced or discontinued because the City Defendant has determined that they do not meet the medical criteria for these services;" and

WHEREAS, the parties desire to resolve the issues raised in this litigation without further proceedings and without admitting any fault or liability; and

WHEREAS, all parties to this action have jointly submitted for the Court's approval an executed document denominated Stipulation of Settlement of a Class Action and Order; and

WHEREAS, the parties jointly request this Court to preliminarily approve the Stipulation of Settlement of Class Action and Order as fair and adequate and to schedule a fairness hearing as required by Federal Rule of Civil Procedure Rule 23(e); and

WHEREAS, Federal Rule of Civil Procedure Rule 23(e)(1) provides that the Court must direct notice in a reasonable manner to all class members who would be bound by the proposal;

IT IS HEREBY STIPULATED AND AGREED, by and among the parties to this action through their undersigned attorneys, that delivery of a copy of the Notice of Proposed Class Action Settlement, annexed hereto as Exhibit A, shall be made as follows:

1) Within the timeframe set forth by 28 U.S.C. § 1715(b), City Defendant shall deliver by mail a copy of the Notice of Proposed Class Action Settlement, along with all other required materials, to the United States Attorney General, pursuant to 28 U.S.C. § 1715(b);

2) A. City Defendant shall deliver by mail a copy of the Notice of Proposed Class Action Settlement to each person who, at any time since January 1, 2011, received 24-hour split shift personal care services and to whom a notice of reduction or discontinuance of such services was issued;

B. Plaintiffs' counsel shall deliver by regular mail or e-mail transmission a copy of the Notice of Proposed Class Action Settlement to the 24 area legal services providers listed in Exhibit B for the purpose of providing information and assistance to class members.

The Court finds that completion of the notification set forth in paragraphs 1 and 2 above at least 30 days before the date of the fairness hearing constitutes reasonable notice to class members who will be bound by the settlement pursuant to Fed. R. Civ. P. 23(c)(2) & (e)(1).

Dated: New York, New York
May 24, 2014

Toby Golick, Esq.
Leslie Salzman, Esq.
Attorney for Plaintiffs

Cardozo Bet Tzedek Legal Services
55 Fifth Avenue, 11th Floor
New York, New York 10003
(212) 790-0240

New York Legal Assistance Group
Attorney for Plaintiffs

By: ______________________
Ben Taylor, Esq.
Eileen Connor, Esq.

7 Hanover Square, 18th Floor
New York, New York 10004
(212) 613-5069

JASA/Legal Services For The Elderly In Queens
Attorney for Plaintiffs

By: ______________________
Donna Dougherty, Esq.
97-77 Queens Boulevard Suite 600
Rego Park, New York 11374
(718) 286-1515

Eric T. Schneiderman, Attorney General
of the State of New York
Attorney for State Defendant

By: ______________________
Robert L. Kraft
Assistant Attorney General
120 Broadway 24th Floor
New York, New York 10271
(212) 416-8632

Zachary W. Carter, Corporation Counsel
of the City of New York
Attorney for City Defendant

By: ______________________
David Alan Rosinus, Jr.
Assistant Corporation Counsel
100 Church Street, 2nd Floor
New York, New York 10007
(212) 356-0877

So Ordered:

____
Shira A. Scheindlin
United States District Judge

Dated: 6/16/14

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT ON BEHALF OF RECIPIENTS OF MEDICAID FUNDED SPLIT-SHIFT PERSONAL CARE SERVICES IN NEW YORK CITY

You are receiving this notice because at some time since January 1, 2011, you received Medicaid-funded continuous 24-hour-per-day personal care services, also known as "split-shift" services, from the New York City Personal Care Services Program and received a notice of intent to reduce or terminate such services on or after January 1, 2011.

A class action case was filed on April 24, 2012 in the United States District Court for the Southern District of New York on behalf of all New York City Medicaid recipients of split-shift home care services who were threatened with, or experienced, a reduction in or termination of those services at any time after January 1, 2011. The name of the case is Strouchler v. Shah and Doar (12 CV 3216). The judge assigned to the case is U.S. District Judge Shira A. Scheindlin. The Medicaid recipients who brought the case alleged that the New York City Medicaid program was using incorrect standards and procedures to reduce or terminate home care. The case was filed against New York City's Human Resources Administration ("HRA"), which administers New York City's Medicaid personal care services program, and the New York State Department of Health ("SDOH"), which is responsible for supervising the administration of the Medicaid program throughout the State.

The parties have agreed on a proposed settlement of this case. The class representatives and Defendants, and their lawyers, all believe that the proposed Settlement Agreement is fair, reasonable, adequate and in the best interest of the members of the class. The Court must approve the Settlement Agreement in order for it to take effect.

This notice is being sent to provide you with background information about this litigation, a description of the proposed settlement, and information about how to tell the Court if you think the proposed settlement is unfair. If you do not have any comments or objections, you do not need to do anything in response to this letter.

WHO IS INCLUDED IN THE PROPOSED SETTLEMENT?

All New York City Medicaid recipients of split-shift home care services, including individuals in the Consumer-Directed Personal Assistance Program, who at any time since January 1, 2011, have been threatened with unlawful reduction or discontinuance of these services or whose services have been unlawfully reduced or discontinued because HRA determined that they did not meet the medical criteria for these split-shift services.

WHAT HAS HAPPENED IN THE LITIGATION PRIOR TO THE PROPOSED SETTLEMENT?

On September 4, 2012, after a hearing, Judge Scheindlin issued a preliminary order against the Defendants that, among other things, prohibited HRA from reducing or terminating split-shift services under certain circumstances and directed the SDOH to issue written clarification about its regulations concerning split-shift services. In an opinion and order dated October 5, 2012, Judge Scheindlin certified the class of New York City Medicaid recipients of split-shift services described above.

The parties have been engaged in settlement discussions over the last year. As a result of State fair hearing decisions and actions taken by HRA over the course of this litigation, any recipient of New York City Medicaid split-shift services whose services had been reduced or terminated for one of the prohibited reasons at any time since January 1, 2011 has previously had the opportunity to have his or her split-shift services restored. For this reason, the proposed settlement addresses future actions by HRA and the SDOH.

THE TERMS OF THE PROPOSED SETTLEMENT

SDOH's Responsibilities:

- The SDOH will amend its Medicaid regulations to clarify that no local Medicaid agency may reduce or terminate split-shift services for any of the following reasons:
  - That the recipient needs only "some" assistance;
  - That the recipient's needs can be predicted or scheduled;
  - That the recipient's only medical needs are turning and positioning;
  - That there has been a change in the recipient's medical condition, unless the Medicaid agency gives the recipient a notice that identifies the change and states why the prior services are no longer needed; or
  - That there has been a mistake in the previous assessment, unless the Medicaid agency submits to the recipient a notice that identifies the mistake and states why the prior services are not needed.

Under the terms of the settlement, if counsel for the Plaintiff Class ("Class Counsel") conclude that the regulations adopted by the SDOH are not consistent with the principles listed above, after following an informal process for resolving disputes under this agreement, Class Counsel may ask the Court to prohibit the implementation of any provision of the regulations that is inconsistent with the above principles.

- The SDOH will provide training about the new regulations to State administrative law judges who hear administrative appeals of local Medicaid decisions.

- The SDOH will provide notice to local Medicaid agencies, managed care organizations and managed long-term care plans informing them about the newly adopted regulations.

- The SDOH's obligations under the agreement will last for 12 months after the adoption of the final regulations required by the agreement. If, however, Class Counsel establish that the SDOH has engaged in systemic non-compliance with any of its obligations under the agreement, the Court may extend the SDOH's obligations under the agreement for a longer time, up to a maximum of twenty-four months after the SDOH's adoption of the final regulations.

HRA's Responsibilities:

- HRA agrees not to reduce or terminate split-shift services for any of the following reasons:
  - That the recipient needs only "some" assistance;
  - That the recipient's needs can be predicted or scheduled;
  - That the recipient's only medical needs are turning and positioning;
  - That there has been a change in the recipient's medical condition, unless the Medicaid agency gives the recipient a notice that identifies the change and states why the prior services are no longer needed; or
  - That there has been a mistake in the previous assessment, unless the Medicaid agency submits to the recipient a notice that identifies the mistake and states why the prior services are not needed.

HRA agrees to follow these requirements for reductions and discontinuances of split-shift services until the SDOH adopts final regulations on the availability of split-shift services, at which time HRA will be bound by State law to follow the new State regulations. In the event that Class Counsel determines that HRA has systemically failed to comply with the provisions of the new State regulations, after following an agreed-upon informal dispute resolution process, Class Counsel can ask the Court for an order directing HRA to comply with those regulations.

- HRA will notify Class Counsel of any SDOH Decision After Fair Hearing that affirms a City decision to reduce or discontinue split-shift services, and will provide Class Counsel with a copy of the fair hearing packet upon request so that they may monitor the City and State actions.

- HRA's obligations under the agreement will last for 15 months after the SDOH adopts final regulations that comply with this agreement, unless Class Counsel challenge any systemic non-compliance with any obligation under the agreement and the Court decides to extend HRA's obligations under the agreement for a longer time, up to thirty-three months after the SDOH's adoption of the final regulations.

Ongoing Obligations Of Both Defendants

- The Plaintiff Class and Defendants will follow a procedure for investigating and, where appropriate, remedying individual incidents, brought to Defendants' attention by Class Counsel, in which it is alleged that the terms and conditions of the Settlement Agreement have been violated by either HRA or SDOH.

- The Settlement Agreement does not limit any individual class member's right to challenge a decision to reduce or terminate split-shift services in an administrative fair hearing or in any court with jurisdiction to hear such a case.

- Defendants will pay to the lawyers for the Plaintiff Class a total amount of $700,000.00 for their attorneys' fees and the costs and disbursements paid by the lawyers in bringing this lawsuit.

Effect of the Settlement:

All class members will be bound by the terms of the proposed settlement if the Court approves it. This means that class members will not be able to bring new lawsuits against the Defendants for the same claims raised in the lawsuit.

THE COURT WILL HOLD A HEARING ON THE FAIRNESS OF THE PROPOSED SETTLEMENT

Before the Settlement Agreement can take effect, the Court will hold a Fairness Hearing to decide whether the settlement is fair, reasonable, and adequate and whether it is in the best interests of the Class Members. At the hearing, lawyers representing the Plaintiff Class and Defendants will ask the Court to approve the Settlement Agreement. If there are objections, the Court will consider them. The Court will then decide whether to approve the Settlement Agreement.

YOU HAVE A RIGHT TO COMMENT ON OR OBJECT TO THE SETTLEMENT

To see a copy of the whole proposed Settlement Agreement, or to ask any questions, you may write to:

Strouchler Counsel, at New York Legal Assistance Group, 7 Hanover Square, 18th floor, New York, NY 10004. You may also call Strouchler Counsel at the New York Legal Assistance Group at (212) 946-0350.

If you want to comment on or object to the Settlement Agreement, you must:

1) Send the completed and signed CLASS MEMBER COMMENT form, which is attached at the end of this Notice, to the lawyers for the Plaintiff Class no later than
to:

Strouchler Counsel
New York Legal Assistance Group
7 Hanover Square, 18th floor
New York, NY 10004

AND

2) Include your comment and/or an explanation of why you think the Settlement Agreement is unfair;

OR

3) Check the box indicating that you intend to appear and speak at the Fairness Hearing.

OR

4) Do both (2) and (3).

The lawyers for the Plaintiff Class will forward a copy of every form to both the Court and the lawyers for Defendants.

If you indicate on the CLASS MEMBER COMMENT form that you intend to appear at the Fairness Hearing, you may come to and speak at the Fairness Hearing, which will be held before **Judge Shira Scheindlin on , 2014, at 10 a.m. The hearing will be in Courtroom 15C, United States District Courthouse, 500 Pearl Street, New York, New York 10007.**

(**Subway Directions**: 4, 5 or 6 to Brooklyn Bridge; J to Chambers Street; N or R to City Hall and walk 1 block east; or A, C, E, 1, 2, or 3 to Chambers Street and walk 3-4 blocks east; then in all instances walk an additional 2 blocks north and one block east. You will need to go through courthouse security screening and give any cell phone or other electronic device to the court officers for safekeeping while you are in the courthouse. Do not bring a laptop computer with you because visitors are not allowed to bring laptops in the courthouse.)

IMPORTANT NOTE: YOU DO NOT HAVE TO DO ANYTHING TO TAKE ADVANTAGE OF THIS SETTLEMENT. YOU ARE NOT REQUIRED TO TAKE ANY ACTION IF YOU DO NOT WANT TO DO SO.

CLASS MEMBER COMMENT FORM

If you want to comment on or object to the terms of the Proposed Settlement Agreement, you must send back this form. You may:

(1) give your comments in writing on this sheet or in your own letter; OR

(2) check below that you plan to speak in person at the Fairness Hearing; OR

(3) do both (1) and (2).

If you want to speak at the Fairness Hearing, you must first check off the box below indicating you want to speak at the Fairness Hearing and send this form to the address below. You are not required to, but you may, write your comment on this form in order to speak at the Fairness Hearing.

** PLEASE PRINT CLEARLY

Last Name: ____________________ First Name: ____________________

Address: ____

City: ______________ Zipcode: __________ Phone Number: ______________

______ Check here if you plan to attend the Fairness Hearing on , 2014 at 10 a.m.

Comment about the Proposed Settlement Agreement:

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No later than , 2014, send this form to:

Strouchler Counsel
New York Legal Assistance Group
7 Hanover Square, 18th floor
New York, NY 10004

EXHIBIT A

Legal Aid Society: Queens Neighborhood Office
120-46 Queens Blvd., 3rd floor
Jamaica, NY 11415

Brooklyn Office for the Aging
111 Livingston Street, 7th floor
Brooklyn, NY 11201

Legal Aid Society: Harlem Community Law Office
230 E. 106th St.
Manhattan, NY 10029

Empire Justice Center - Public Benefits
119 Washington Avenue
Albany, NY 12210

DC 37 Municipal Employees' Legal Services (MELS)
125 Barclay Street
New York, NY 10007

Main Street Legal Services, Inc., Elder Law Clinic
2 Court Square
Long Island City, NY 11101

New York City Department for the Aging
2 Lafayette Street, 7th Floor
Manhattan, NY 10007

MFY Legal Services, Inc. - Manhattan Seniors Project
299 Broadway, 4th floor
Manhattan, NY 10007

Volunteers of Legal Service (VOLS) Elderly Project
281 Park Avenue South
Manhattan, NY 10010

Legal Aid Society: Bronx Neighborhood Office
260 East 161st St.
Bronx, NY 10451

Legal Aid Society: Brooklyn Neighborhood Office - Government Benefits Unit
111 Livingston Street, 7th floor

Brooklyn, NY 11201

Legal Aid Society: Staten Island Office
60 Bay Street
Staten Island, NY 10301

Northern Manhattan Improvement Corporation
76 Wadsworth Avenue
Manhattan, NY 10033

Project FAIR (Fair hearing, Assistance, Information and Referral)
111 Livingston Street, 7th Floor
Brooklyn, NY 11201

Queens Volunteer Lawyers Project, Inc.
90-35 148th Street
Briarwood, NY 11435

Lenox Hill Neighborhood House
331 East 70th Street
Manhattan, NY 10021

Legal Aid Society: Health Law Unit
199 Water St.
Manhattan, NY 10038

City Bar Justice Center Legal Hotline
42 West 44th Street
Manhattan, NY 10036

Caribbean Women's Health Association, Inc.
3512 Church Ave.
Brooklyn, NY 11203

The LGBT Bar Association of Greater New York (LeGaL)
601 West 26th Street Suite 325-20
New York, NY 10001

Arab-American Family Support Center
150 Court Street, 3rd Floor
Brooklyn, NY 11201

The Family Center
315 West 36th Street, 4th Floor
Manhattan, NY 10018

Center for Independence of the Disabled
841 Broadway
New York, NY 10003

South Brooklyn Legal Services
105 Court St.
New York, NY 11201

EXHIBIT B